Chapter 20
Indian Trust Assets

Indian Trust Assets (ITAs) are legal interests in property held in trust by the United States for federally-recognized Indian tribes or individual Indians. Land assets held in trust for individual Indians are more specifically referred to as allotments, or as in the case of allotments created out of public domain lands - Public Domain Allotments (PDAs). An Indian trust has three components: 1) the trustee, 2) the beneficiary, and 3) the trust asset. ITAs can include lands, minerals, federally reserved hunting and fishing rights, federally reserved water rights, and in-stream flows associated with a reservation, rancheria, or PDA. Beneficiaries of the Indian trust relationship are federally-recognized Indian tribes and individual Indians with trust land; the United States is the trustee.

By definition, ITAs cannot be sold, leased, or otherwise encumbered without approval of the United States. The definition and application of the U.S trust relationship has been defined by case law that supports Congressional acts, executive orders, and historic treaty provisions.

Consistent with President Clinton's April 29, 1994, Memorandum, CALFED agencies assess the effect of their programs on tribal trust resources and federally reserved tribal governmental rights and concerns. CALFED agencies are tasked to actively engage federally-recognized tribal governments and consult with such tribes on a government-to-government level. The Department of Interior Departmental Manual Part 512 Chapter 2, Departmental Responsibilities for Indian Trust Resources, ascribes the responsibility for ensuring protection and preservation of ITAs from loss, damage, and unlawful alienation, waste, and depletion to the heads of bureaus and offices. EWA agencies will be responsible for assessing whether Environmental Water Account (EWA) water acquisitions and management options have the potential for affecting ITAs.

It is the general policy of the Department of Interior to carry out activities in a manner that protects ITAs and avoids adverse effects whenever possible (Reclamation Indian Trust Asset Policy, July 2, 1993). EWA agencies have incorporated protective environmental measures into the project description and may invoke mitigation measures that reduce effects to a less than significant level. These measures would ensure compliance with threshold levels of significance documented within this Environmental Impact Statement/ Environmental Impact Report (EIS/EIR). In the event an effect is identified, consultation with affected federally recognized tribal governments proceeds through the EWA agencies, the Bureau of Indian Affairs, the Office of the Solicitor, and the Office of American Indian Trust.

EWA water acquisition and management options include groundwater substitution, stored reservoir water, crop idling, groundwater purchase, and source shifting. Water purchase agreements are structured to recognize local leadership and work cooperatively with water associations, local government, and local interests, including

tribes. Should tribes choose to supply water to the EWA, transactions will comply with procedures contained in the Department of Interior Department Manual Part 512, Chapter 2. These guidelines protect tribal resources and require approval of the Secretary of Interior before sale of land, natural resources, water, or other assets. Federally reserved water rights held in trust for tribes by the United States are ITAs that are restricted from being separated from tribes and individual Indians without the approval of the Secretary of the Interior.

20.1 Affected Environment/Existing Conditions

The EWA Study area comprises the Upstream from the Delta Region and the Export Service Area. Because there are no Indian trust lands located in the Delta, and no actions potentially affecting ITAs are planned in the Delta, this section eliminates this geographic area from further ITA impact analysis.

Areas for groundwater purchase and additional groundwater storage are limited to areas previously used for groundwater storage; therefore, any new sale of groundwater for EWA purposes can only occur from existing groundwater storage areas. Because these actions would not affect ITAs, this section eliminates such options from further analysis.

Exercising source shifting to protect against a low point problem in San Luis Reservoir involves increased use of water from Castaic Lake, Lake Perris, Lake Mathews, Anderson Reservoir, and Diamond Valley Lake. There is no direct overlap between these reservoirs and Indian land. The Soboba Reservation lies less than ten miles northeast of Diamond Valley (Welch 2003). This section will not include detailed effects analysis for source shifting because Indian trust land does not overlap reservoirs that are subject to source shifting and the nearest reservoir is ten miles north east of Diamond Valley Lake.

Acquiring EWA assets through increased use of stored reservoir water involves reservoirs on the Middle Fork of the Upper American River (French Meadows and Hell Hole), North Yuba River (New Bullards Bar), and South Fork of the Feather River (Little Grass Valley and Sly Creek). Based on GIS data, the nearest trust land is 9.2 miles away from the reservoirs in question (Welch 2003). It is presumed there are no off-reservation, federally-reserved hunting, fishing, or gathering rights near reservoirs proposed for stored reservoir water transfer[1].

Crop idling could produce fugitive dust that may affect adjacent land uses. Rainfall and rice production practices in upstream areas, and mitigation measures outlined in Section 8.2.7 would reduce potential effects to a less than significant level.

[1] Project proponents need to acquire enabling legislation that establishes Indian trust land and any off-reservation federally reserved rights.

Groundwater substitution could result in increased depth to groundwater in neighboring vicinities and/or increasing costs of groundwater pumping. This action could interfere with federally reserved water rights.

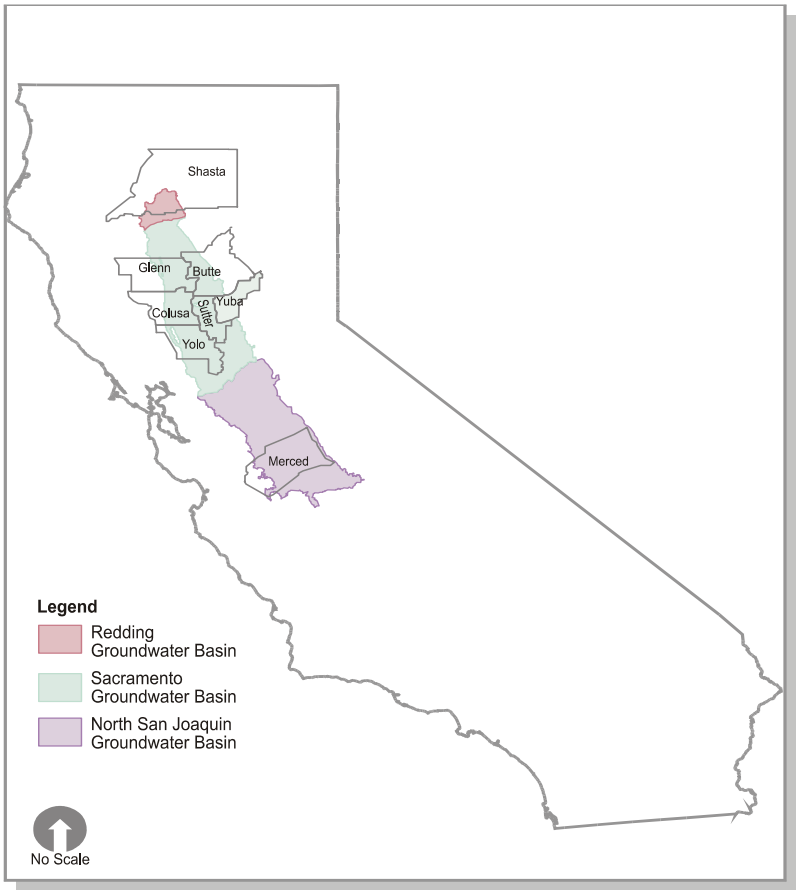

Figure 20-1
Indian Trust Assets Area of Analysis

20.1.1 Area of Analysis

Groundwater substitution is the only water acquisition option that could potentially affect ITAs. EWA agencies are proposing groundwater substitution in the Upstream from the Delta Region along the Sacramento, Feather, Yuba , and Merced Rivers (Figure 20-1). Discussion of ITAs proceeds from north to south along these river systems.

20.1.1.1 Upstream from the Delta Region

20.1.1.1.1 Sacramento River

The northernmost indigenous California people in the EWA project area were the Achowami, Atsugewi, Ajumawi, Wintun, Pit River, and the Yana (San Diego State University 2002). Descendants of these tribes live on the Big Bend, Burney Tract, Montgomery Creek, Redding, and Roaring Creek Rancherias in Shasta County. Shasta County also has 15 PDAs.

Maidu and Wintun people inhabited the downstream Colusa Basin section of the Sacramento River (CDM 1995; Glenn Colusa Irrigation District, California Department of Fish & Game, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers 1998). The Wintun Tribe comprises three divisions: Patwin, Nomlaki, and Wintu. Present-day descendants of the Wintun live on the Colusa (Cachil Dehe) and Cortina Rancherias in Colusa County and Rumsey Rancheria in Yolo County. Wintun-Wailaki descendants in Glenn County live on the Grindstone Creek Rancheria. The Paskenta Band of Nomlaki Indians has a large tract of trust land in Glenn County, just northwest of Orland, near I-5. Colusa County has one PDA; there are no PDAs in Glenn and Yolo Counties.

20.1.1.1.2 Feather River

Evidence indicates that the Feather River region was inhabited by the Wintun and Maidu people for thousands of years. The Konkow, the northwestern branch of the Maidu nation, inhabited portions of the Central Valley and western slopes of the Sierra Nevada to the north and northeast of Sutter Buttes. The Konkow were bordered on the west by the Nomlaki (Wintun) and on the north by the Yana and Northeastern Maidu. The southernmost group of the Yana was the Yahi (City of Oroville 1995; Butte County 1998). The southernmost Maidu called themselves the Nisenan people, and occupied the drainages of the Yuba, Bear, and American Rivers, and the lower drainages of the Feather River (Sutter County 2001).

Major political Nisenan sites were along the mouths of the Feather, American, and Yuba Rivers. Abundant game, waterfowl, fish, and plant resources supported the entire region (Wilson and Towne 1978).

Descendants of the Maidu live on the Greenville Rancheria in Plumas County and on the Mooretown, Berry Creek, and Enterprise Rancherias in Butte County. The Mechoopda Indian Tribe of the Chico Rancheria (a federally-recognized Tribe) recently acquired 50 acres in fee status in Butte County. Fee land by definition is not held in trust by the United States.

Two PDAs exist in Butte County. Sutter County has no rancherias, reservations, or PDAs.

20.1.1.1.3 Yuba River

Native Americans indigenous to Yuba County are the Maidu. Southern Maidu occupied the Bullards Bar area. Valley Nisenan villages were generally located along watercourses (Yuba County 1994). Yuba County has no rancherias, reservations or PDAs.

20.1.1.1.4 Merced

Inhabited largely by the Yokuts Indian group, the San Joaquin Valley contained approximately 50 different Yokuts tribes. Tribes typically occupied areas along small creeks and streams where villagers could weave lodges out of the profusely growing tule. The Yokuts were nearly extinct by the 1800s due to diseases brought by missionaries and miners (Merced County 2001). Merced County contains no rancherias, reservations, or PDAs.

20.2 Environmental Consequences/Environmental Impacts

20.2.1 Assessment Methods

Under each alternative, the EWA Project Agencies would negotiate contracts with willing sellers based on a number of factors, including price, water availability, and location. These factors would change from year-to-year; therefore, the EWA Project Agencies may choose to vary their acquisition strategy in each year. For maximum

flexibility, this analysis includes many potential transfers when the EWA Project Agencies would likely not need all transfers in a given year. Chapter 2 defines the transfers that are included in this analysis.

Potential effects on ITAs stem from actions or activities that would affect Indian trust lands and federally reserved hunting, fishing, gathering, water, or other rights. Groundwater substitution could potentially affect ITAs. The first step of the impact analysis was to identify likely locations for EWA groundwater substitution transfers and their relationship to ITAs through the following process:

1) The Bureau of Indian Affairs 2000 Indian Trust Lands map was used to identify and eliminate tribal trust lands in the foothills of the Coast Range and Sierra Nevada, as groundwater transfers will not take place in these locations.
2) Indian trust lands located outside of groundwater basins (in areas of consolidated rock) and far from any EWA pumping in the Central Valley were eliminated (such as the Cortina and Table Mountain Rancherias). EWA groundwater substitution transfers would not occur in these areas.
3) Potentially affected ITAs in unconsolidated deposits of sands and gravels with major rivers and streams that act as recharge sources in the Central Valley include those associated with the:

    a. Redding Rancheria
    b. Colusa (Cachil Dehe) Rancheria
    c. Paskenta Band of Nomlaki Indians

4) Consistent and careful monitoring would ensure that groundwater transfers do not deplete riverflows.

If EWA agencies identify potential impacts to ITAs, tribal consultation will then precede any formal EWA groundwater transfer in the vicinity of the three identified tribes. Government–to-government consultation shall take place to determine interests, concerns, effects, and appropriate mitigation measures. (Refer to Figure 20-1.) Consultation may involve the EWA agencies, the Bureau of Indian Affairs, the Regional Solicitor's Office, and the California Department of Water Resources (DWR).

20.2.2 Significance Criteria

An effect is considered potentially significant if implementation of an EWA action would adversely affect ITAs. Direct effects are those that result from EWA acquisitions via groundwater substitution.

This analysis determines that groundwater substitution operations would have significant effects if the action:

- Interferes with the exercise of a federally reserved water right;

- Degraded water quality where there is a federally reserved water right;
- Adversely affects the health of the tribe by decreasing water supplies;
- Interferes with the use, occupancy, or character of Indian trust lands by decreasing groundwater tables;
- Adversely affects fish and wildlife where there is a federally reserved hunting, gathering, or fishing right.

20.2.3 Environmental Measures Incorporated into the Project Description

Consistent with the CALFED ROD and the Department of Interior Departmental Manual Part 512 Chapter 2, EWA agencies have adopted the following environmental measures into the project description to reduce the EWA's potential effects on ITAs.

1) If there is a potential effect to ITAs identified by the EWA agencies, then consultation will be initiated by the EWA agencies with the affected tribes in the groundwater sub-basin as defined in Bulletin 118 before groundwater substitution transfers are finalized and signed. The purpose of the tribal consultation will be to further identify the nature of the effect and to identify appropriate mitigation measures.

2) EWA agencies will discuss appropriate avoidance and/or mitigation strategies on a government-to-government basis. The tribal consultation process will take place with the affected federally-recognized Indian tribes and EWA agencies. Separate mitigation measures may be required for different types of trust assets, including federally reserved water, land, minerals, hunting, fishing, and gathering rights. Mitigation measures would ensure compliance with thresholds of significance documented within this EIS/EIR. Mitigation measures are found in Sections 4.2.8 (Surface Water Supply and Water Management), 7.2.7 (Geology and Soils), 8.2.7 (Air Quality), and 16.3.9 (Power Production).

20.2.4 Environmental Consequences/Environmental Impacts of the No Action/No Project Alternative

In the No Action/No Project Alternative, ITAs would remain protected and intact. Water transfers from existing groundwater storage basins would continue to respect the integrity of federally protected lands, minerals, hunting and fishing rights, water rights, and in-stream flows associated with a reservation, rancheria, or PDA. The No Action/No Project Alternative would not affect water usage or availability. Land use, occupancy, and character of Indian trust lands would remain unaffected. The No Action/No Project Alternative, therefore, reflects the same conditions as the Affected Environment. The No Action/No Project Alternative would have no effect on ITAs.

Figure 20-2

The NEPA basis of comparison is the Future Conditions Without the Project. As described in the above paragraph, the Affected Environment and the Future Conditions Without the Project are the same; therefore, they are collectively referred to as the Baseline Condition in the following sections.

20.2.5 Environmental Consequences/Environmental Impacts of the Flexible Purchase Alternative

The Flexible Purchase Alternative allows transfers of up to 600,000 acre-feet and does not specify transfer limits in the Upstream from the Delta Region or the Export Service Area. Transfers that take place in the Upstream from the Delta Region would be between 50,000 and 600,000 acre-feet, limited by hydrologic year and conveyance capacity through the Delta. Although all potential transfers would not occur in one year, this section discusses potential impacts of maximizing groundwater substitution, although EWA agencies have a variety of available acquisition options that they may choose to vary according to hydrologic conditions and need. Because groundwater substitution would not occur in the Export Service Area, this EWA action would not affect the Export Service Area. The following impact analysis concentrates on the Upstream from the Delta Region.

20.2.5.1 Upstream from the Delta Region

The following impact analysis and discussion is not divided along rivers. The potential effects on ITAs due to groundwater substitution would not differ by county or river, except that the EWA agencies have not proposed groundwater substitution along the American River. Therefore, the effects of groundwater substitution on the remaining rivers are evaluated together.

20.2.5.1.1 Sacramento, Feather, Yuba, and Merced Rivers

EWA acquisition of water from Sacramento River Agencies, Feather River Agencies, Yuba County Water Agency, and Merced Irrigation District via groundwater substitution would decrease groundwater levels. Landowners and tribes in the vicinity of a groundwater substitution transfer could experience drawdown in wells relative to the Baseline Condition, which could increase costs of bringing the water to the surface or potentially dry out wells. Section 6.2.7, Groundwater Mitigation Measures, contains specifications for monitoring and mitigation plans that reduce potential third party effects. Water acquisitions shall require notification of the EWA agencies, and if potential effects to ITAs are identified, then consultation by EWA agencies with the affected federally-recognized Indian tribe will commence before the water acquisition is finalized in order for the EWA agencies to fully execute their Federal Indian trust responsibilities. The EWA agencies in consultation with affected tribes will identify tribal concerns, issues, tribal regulations, and recommendations that could further minimize effects to ITAs.

Multi-year contracts for sale of water to EWA agencies are contingent on the abovementioned groundwater mitigation measures. Transfers should:

- not exceed significance criteria found in Groundwater Section 6.2.2;
- assure that use of extraction wells minimizes risk to surface and groundwater quality;
- incorporate an adequate monitoring program; and
- proceed only after appropriate tribal consultation has been completed, if federally-recognized ITAs are potentially affected.

All groundwater mitigation measures must be implemented before the EWA agencies authorize a second year of groundwater acquisitions.

20.2.6 Environmental Consequences/Environmental Impacts of the Fixed Purchase Alternative

The Fixed Purchase Alternative specifies purchases of 35,000 acre-feet in the Upstream from the Delta Region and 150,000 acre-feet in the Export Service Area. While the amounts in each region are fixed, the acquisition types and sources could vary. To allow the EWA Project Agencies maximum flexibility when negotiating purchases with willing sellers, this section documents the effects of maximum groundwater substitution though the EWA agencies have various acquisition options.

20.2.6.1 Upstream from the Delta Region

The effects of groundwater transfers for the Flexible Purchase Alternative, which are decreased groundwater levels and increased groundwater pumping costs, are similar for the Fixed Purchase Alternative. However, groundwater transfers under the Fixed Purchase Alternative in the Upstream from the Delta Region are substantially less than those under the Flexible Alternative because purchases are limited to 35,000 acre-feet.

20.2.6.1.1 Sacramento, Feather, Yuba, and Merced Rivers

EWA acquisition of water from Sacramento River Agencies, Feather River Agencies, Yuba County Water Agency, and Merced Irrigation District via groundwater substitution would decrease groundwater levels. Landowners and tribes in the vicinity of a groundwater substitution transfer could experience drawdown in wells relative to the Baseline Condition, which could increase the costs of bringing the water to the surface or potentially dry out wells. Chapter 6, Groundwater Resources, contains specifications for monitoring and mitigation plans that reduce potential third party effects. Water acquisitions shall require notification of the EWA agencies, and if potential effects to ITAs are identified, then consultation with the affected federally-recognized Indian tribe by EWA agencies will commence before the water acquisition is finalized in order for the EWA agencies to fully execute their Federal Indian trust responsibilities.

Multi-year contracts for sale of water to EWA agencies are contingent on the abovementioned groundwater mitigation measures. Transfers should:

- not exceed significance criteria found in Groundwater Section 6.2.2;
- assure that use of extraction wells minimizes risk to surface and groundwater quality;
- incorporate an adequate monitoring program; and
- proceed only after appropriate tribal consultation has been completed, if federally-recognized ITAs are potentially affected.

All groundwater mitigation measures must be implemented before the EWA agencies would authorize a second year of groundwater acquisitions.

20.2.7 Comparative Analysis of Alternatives

This section analyzes the effects of maximum groundwater substitution transfers that could occur in 1 year for the Fixed and Flexible Purchase Alternatives. This "worst case" scenario approach ensures that all effects of transfers are identified and provides the EWA Project Agencies contract negotiation flexibility when choosing between acquisition options. EWA agencies, however, would not actually purchase all this water in the same year. This section provides information about how EWA agencies would more likely operate in different hydrologic years.

During No Project conditions, as well as with the project, federally reserved lands, minerals, hunting and fishing rights, water rights, and in-stream flows associated with a reservation, rancheria, or PDA remain protected. The No Action/No Project Alternative would not affect water usage or availability. Land use, occupancy, and the character of Indian trust lands would remain unaffected regardless of hydrologic conditions.

20.2.7.1 Upstream from the Delta Region

In the Upstream from the Delta Region, the Fixed Purchase Alternative would be limited to a maximum acquisition of 35,000 acre-feet from all sources of water. In most years, this amount could be obtained from surface water storage from non-Project reservoirs. The Fixed Purchase Alternative would not likely involve groundwater substitution transfers; therefore, it would not likely affect ITAs.

The Flexible Purchase Alternative could involve the purchase of up to 600,000 acre-feet of water from multiple sources in the Upstream from the Delta Region. EWA agencies would prefer to purchase water from upstream sources because the water is generally less expensive. The amount that could be purchased would be limited by the available capacity of the Delta export pumps to move the water to export areas south of the Delta. During wet years, available pump capacity may be limited to as little as 50,000 to 60,000 acre-feet of EWA water because the pumps primarily would be used to export State and Federal Project water to Export Service Area users. During dry years, when less Project water would be available for pumping (and therefore the

pumps would have greater available capacity), the EWA Project Agencies could acquire up to 600,000 acre-feet of water in the Upstream from the Delta Region.

The potential for effects on ITAs during wet years for the Flexible Purchase Alternative would be very similar to the Fixed Purchase Alternative. That is, during wet years, acquisitions would most likely be from stored water sources, and the EWA agencies would not purchase water through groundwater substitution. As rainfall amounts for areas north of the Delta decrease, reflecting dry year conditions, the greater capacity of the export pumps to move EWA assets could result in a greater reliance on groundwater substitution transfers for the additional EWA acquisitions. If the EWA Project Agencies were to make a 600,000 acre-foot acquisition in the Upstream from the Delta Region, they would need to utilize most available sources, which would include stored reservoir water, groundwater substitution, groundwater purchase, and crop idling.

Although groundwater mitigation measures described in Section 6.2.7.2 would be employed to minimize potential impacts, the greater reliance on groundwater during dry years could result in the Flexible Purchase Alternative having a greater potential for effects on ITAs than the Fixed Purchase Alternative. The greatest potential for effects would be if there were several dry (drought) years in a row, a time period when other water users upstream of the Delta would also be relying on groundwater resources as a major portion of their water supply.

20.2.7.2 Export Service Area

The EWA agencies would acquire assets in the Export Service Area from stored groundwater and crop idling sources. Stored groundwater would be acquired from agencies that have previously stored water in the ground (e.g., Kern Water Bank, Santa Clara Valley Water District); therefore, there would be no effects on ITAs.

A summary of the effects of the Fixed Purchase and Flexible Purchase Alternatives are listed in Table 20-1.

Table 20-1
Comparison of Effects on Indian Trust Asset by Fixed vs. Flexible Purchase Alternatives

Region	*Asset Acquisition or Management*	*Result*	*Effects*	*Flexible Alternative Change*	*Fixed Alternative Change*	*Significance of Flexible Alternative*	*Significance of Fixed Alternative*
Sacramento, Feather, Yuba, and Merced Rivers	Groundwater substitution	Decrease ground-water levels beyond the Baseline Condition	Could increase pumping costs or dry out wells on property owned by tribes in vicinity of groundwater substitution transfer	Total 330 TAF groundwater substitution transfer in upstream region; no groundwater substitution in Export Service Area	Total 35 TAF groundwater substitution transfer in upstream region; no groundwater substitution in Export Service Area	Potentially affected trust lands warrant government-to-government consultation	Potentially affected trust lands warrant government-to-government consultation

20.2.8 Mitigation Measures

Groundwater substitution could result in increased depth to groundwater in neighboring vicinities and/or increasing costs of groundwater pumping. This action could interfere with federally reserved water rights. Groundwater transfers occurring within 1-2 miles of ITAs associated with the Redding Rancheria, Colusa Rancheria, or Paskenta Band of Nomlaki Indians would undergo consultation with affected federally recognized tribal governments, EWA agencies, the Bureau of Indian Affairs, the Office of the Solicitor, and the Office of American Indian Trust.

1) Consultation could identify any of the following mitigation measures as appropriate for reducing effects to a less than significant level:

   - more frequent groundwater monitoring
   - more detailed pre-purchase groundwater evaluation
   - estimates of potential interference with Indian wells
   - discontinuation of EWA groundwater pumping if groundwater levels are drawn down to a level of concern. (Refer to Section 6.2.7.2).

2) Mitigation measures necessary to reduce effects to a less than significant level will be developed in consultation with the affected federally recognized tribe(s), before implementation. Other mitigation measures will be used as determined appropriate through tribal consultation.

20.2.9 Potentially Significant and Unavoidable Impacts

There are no expected significant and unavoidable impacts to ITAs. The United States will consult with appropriate tribes to identify possible effects and avoid or mitigate adverse effects.

20.2.10 Cumulative Effects

Other water acquisition programs considered in the cumulative effects analysis include the Sacramento Valley Water Management Agreement, Dry Year Purchase Program, Drought Risk Reduction Investment Program (DRRIP), Central Valley Project Improvement Act (CVPIA) Water Acquisition Program (WAP), and Environmental Water Program (EWP). This ITA cumulative analysis focuses only on those programs that potentially pose incrementally detrimental effects through groundwater substitution in all areas of the State.

Groundwater substitution is a component of all the water acquisition programs. During wet years, the only groundwater substitution programs are EWA, EWP, and the CVPIA WAP. Recharge in wet years would decrease effects; however, they are

still considered potentially significant. Effects described in Chapter 6, Groundwater Resources, are potentially cumulatively significant in both wet and dry years without appropriate mitigation. Water transfers concerning the abovementioned water acquisition programs will be facilitated through CALFED's Water Transfer Program.

It is reasonable to assume that other groundwater usage programs could evolve in the foreseeable future. As discussed in Chapter 6, Groundwater Resources, all are required to have monitoring and mitigation plans that prevent third party effects, similar to those that apply to EWA actions. Careful monitoring and management is necessary to mitigate any potential effects to a less than significant level. Additionally, all EWA groundwater substitution acquisitions in the vicinity of an ITA require notification of the United States before such acquisitions are finalized in order for the United States to fully execute its Indian Trust responsibilities. After deliberation by subject matter experts and appropriate tribal consultation, mitigation would reduce effects to a less-than-significant level.

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